



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/167033

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on September 10, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly assessed an overpayment in the amount of \$2,006.00 for the period of August 1, 2014 through December 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Luisa McCay

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Outagamie County. The petitioner's household size is 4.
2. In July 2014 the petitioner completed a renewal of her public assistance benefits.

3. Following her renewal on July 8, 2014 the agency sent the petitioner a notice. The notice stated that the family had BadgerCare (BC) Plus coverage effective August 1, 2014. The notice further advised that if the petitioner's household income before taxes increased above \$1,987.50, she had to report the increase in income to the agency.
4. The petitioner monthly household income between July 2014 and January 2015 was as follows:
 - a. July 2014 – \$2,000
 - b. August 2014 - \$2,151.02
 - c. September 2014 - \$2,039.99
 - d. October 2014 - \$3,064.75
 - e. November 2014 - \$2,025.81
 - f. December 2014 - \$4,160.50
 - g. January 2015 - \$1,994.43
5. Between July 2014 and January 2015 the petitioner never reported an increase in income to the agency.
6. On May 22, 2015 the agency sent the petitioner a notice stating that was overpaid \$2,006.00 in medical benefits for the period of August 1, 2014 through December 31, 2014.
7. On June 30, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Any MA recipient must report changes that impact eligibility within 10 days of the change. MA Handbook, § 12.1. A BadgerCare (BC) Plus recipient must report an income change when the household's income exceeds 100% of the Federal Poverty Limit (FPL). BadgerCare Plus Handbook (BCPH), § 27.3. Income above 100% of the FPL impacts BC Plus eligibility. BCPH, § 16.1.1. A change reported by the 10th of the month is implemented the 1st of the following month. See BCPH, § 28.2, Example 1.

In this case the petitioner's household's income exceeded 100% of the FPL in July 2014. This increase in income should have been reported to the agency no later than August 10, 2014. The agency would have implemented this change effective September 1, 2014. Thus, the agency correctly established an overpayment for the period of September 1, 2014 through December 31, 2014.

The petitioner argues that even with their higher income they would have been eligible for BC Plus benefits. They reasoned that they have a higher income now, and still receive benefits. The agency explained that they are in a six month extension period. The petitioner would have been eligible for the six month extension during the overpayment period, however, the increase in income was never reported, and nothing was done to trigger the extension. This gave rise to the overpayment. Had the petitioner been in the extension during the overpayment period, the petitioner would not be eligible for the extension period now because only one six month extension is available.

The petitioner states that she immediately reported her increase in income. She testified that she was on leave and just returning to work when she completed the renewal. She provided paystubs that were lower given that she was just returning to work. When her paystubs increased, she testified that she dropped off these new paystubs to the agency.

I do not find this testimony credible. The case comments do not reflect this sequence of events. She could not provide any documentary evidence to support her testimony. Although she had date stamped items from the renewal items she dropped off at the agency, she did not have date stamped copies of these later paystubs. She could not state the specific date she dropped off the more recent paystubs. This testimony is self-serving after the agency establishes an overpayment.

CONCLUSIONS OF LAW

The agency correctly established an overpayment for the period of September 1, 2014 through December 31, 2014. The agency incorrectly included the month of August in the overpayment.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency. The agency shall rescind this overpayment notice. The agency should then recalculate the overpayment amount for the period from September 1, 2014 through December 31, 2014. They shall then issue another overpayment notice for those months with the updated amount. The agency has 10 days to comply with this order. This appeal is dismissed in all other respects.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

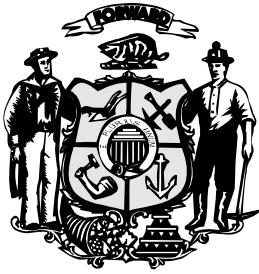
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 29, 2015.

Outagamie County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability